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OCT 10 2006

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: David L. Churchill  
Application No.: 10/677,578  
Filing date: October 2, 2003  
Title: Microminiature Gauging  
Displacement Sensor

Docket No.: 115-007  
Date: October 10, 2006  
Group Art Unit: 2862  
Examiner: Kenneth Whittington

## Petition Under 37 CFR 1.181(a)

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

This petition accompanies a response to the office action. The six month period for response from the April 10, 2006 date of the office action ends on October 10, 2006. Thus, this is not a case of withdrawing the holding of abandonment.

Applicant petitions the Director requesting that the period for filing this amendment be restarted to September 28, 2006, the date applicant found out about and downloaded the office action from the PTO web site. The PTO mailed the office action in response to an RCE on April 10, 2006. Applicant's attorney did not receive the office action. A search of the file jacket and docket records indicates that the office communication was not received. A copy of the file jacket where the nonreceived office communication would have been entered had it been received and docketed is attached.

Applicant's attorney is a sole practitioner with no employees. While applicant's

## CERTIFICATE OF MAILING

I hereby certify that, on the date shown below, this correspondence is being:

## MAIL

☐ deposited with the United States Postal Service with sufficient postage as express mail in an envelope addressed to:

Commissioner for Patents  
PO Box 1450  
Alexandria VA, 22313-1450

Date: 10/10/06

## FACSIMILE

☒ transmitted by facsimile to the Patent and Trademark Office.

James Marc Lees

Name

James Marc Lees

Signature

115-007

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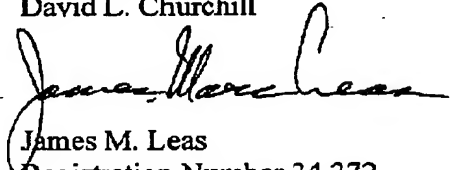
attorney has not maintained and does not maintain a docket record notebook listing all mail received and the date of its receipt, applicant's attorney does personally review each item of received mail, records all received mail on the respective file jacket at the time it is received, faxes a copy of all received mail to applicant, Microstrain, Inc., enters the matter into a computerized calendar system, and enters the start and stop times into an Excel file for billing Microstrain, Inc. for the time spent reviewing and faxing the office action. A review of the file jacket (copy attached) shows that the item was not entered. A review of the file in the office of applicant, Microstrain Inc. by their secretary shows that it is not there. A review of the computerized calendar system shows no entry. And a review of the Excel file shows no entry and that Microstrain was not billed for time for this. Thus, the mail from the PTO was not received by applicant's attorney.

On September 28, 2006, applicant's attorney went on the US PTO's PAIR system and performed a review of the status of all the patent applications in his docket that were awaiting a response from the PTO. This was the only patent application that the PAIR system showed that the office action had been mailed by the PTO but had not been received by applicant's attorney.

Applicant requests that the time period be restarted to the date applicant's attorney first found out about and downloaded the office action, September 28, 2006. This will have the effect of avoiding late fees and impact on any potential extension of patent term.

Should this petition be denied, applicant or applicant's attorney will pay the late fee. Thank you very much for considering this matter.

Respectfully submitted,  
For: David L. Churchill

By:   
James M. Leas  
Registration Number 34,372  
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James M. Leas  
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S. Burlington, Vermont 0540

115-007

MICROMINATURE GAUGING  
DISPLACEMENT SENSOR

Dave Churchill Steven Muxell

non provisional	10/677,578 filed	10/02/03
post card received	mailed	10/16/03
filing receipt		1/8/04
notice to fix drawings		1/8/04
Response to notice		3/4/04
Updated filing receipt		4/1/04
Notice of publication		7/8/04
Rejection		1/24/05
Amendment (A)		4/14/05
Notice of non-compliance & fee letter		4/21/05
Response to Notice of amendment		5/4/05
Rejection		6/21/05
Amendment after final (B)		9/20/05
Rejection non-final		10/5/05
Amendment (C)		12/19/05
Final rejection		1/19/06
Amendment (D) after final		2/13/06
Advisory action		3/1/06
ACE		5/13/06

115-007

PTO/SB/17 (07-06)

Approved for use through 01/31/2007. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Effective on 12/08/2004.  
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**  
**For FY 2005**☒ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)  
500**Complete if Known**

Application Number 10 677,578  
 Filing Date October 2, 2003  
 First Named Inventor David L. Churchill  
 Examiner Name Kenneth Whittington  
 Art Unit 2862  
 Attorney Docket No. 115-007

OCT 10 2006

**METHOD OF PAYMENT (check all that apply)**

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_  
☐ Deposit Account Deposit Account Number: \_\_\_\_\_ Deposit Account Name: \_\_\_\_\_

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee  
☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)

Small Entity Fee (\$)

Each independent claim over 3 (including Reissues)

50

25

Multiple dependent claims

200

100

360

180

Total Claims 35 Extra Claims 16 Fee (\$)  
51 - 20 or HP = 16 x 25 = 400

Multiple Dependent Claims

HP = highest number of total claims paid for, if greater than 20.

Fee (\$)

Fee Paid (\$)

Indep. Claims 4 Extra Claims 1 Fee (\$)  
4 - 3 or HP = 1 x 100 = 100

Fee (\$)

Fee Paid (\$)

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets 35 Extra Sheets 16 Number of each additional 50 or fraction thereof 1 Fee (\$)  
35 - 100 = 16 / 50 = 1 (round up to a whole number) x 125 = 125

Fee (\$)

Fee Paid (\$)

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): \_\_\_\_\_

**SUBMITTED BY**

Signature James Marc Clear Registration No. 34372 Telephone 802 864 1575  
 Name (Print/Type) James Marc Clear Date 10/10/06

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1460, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.